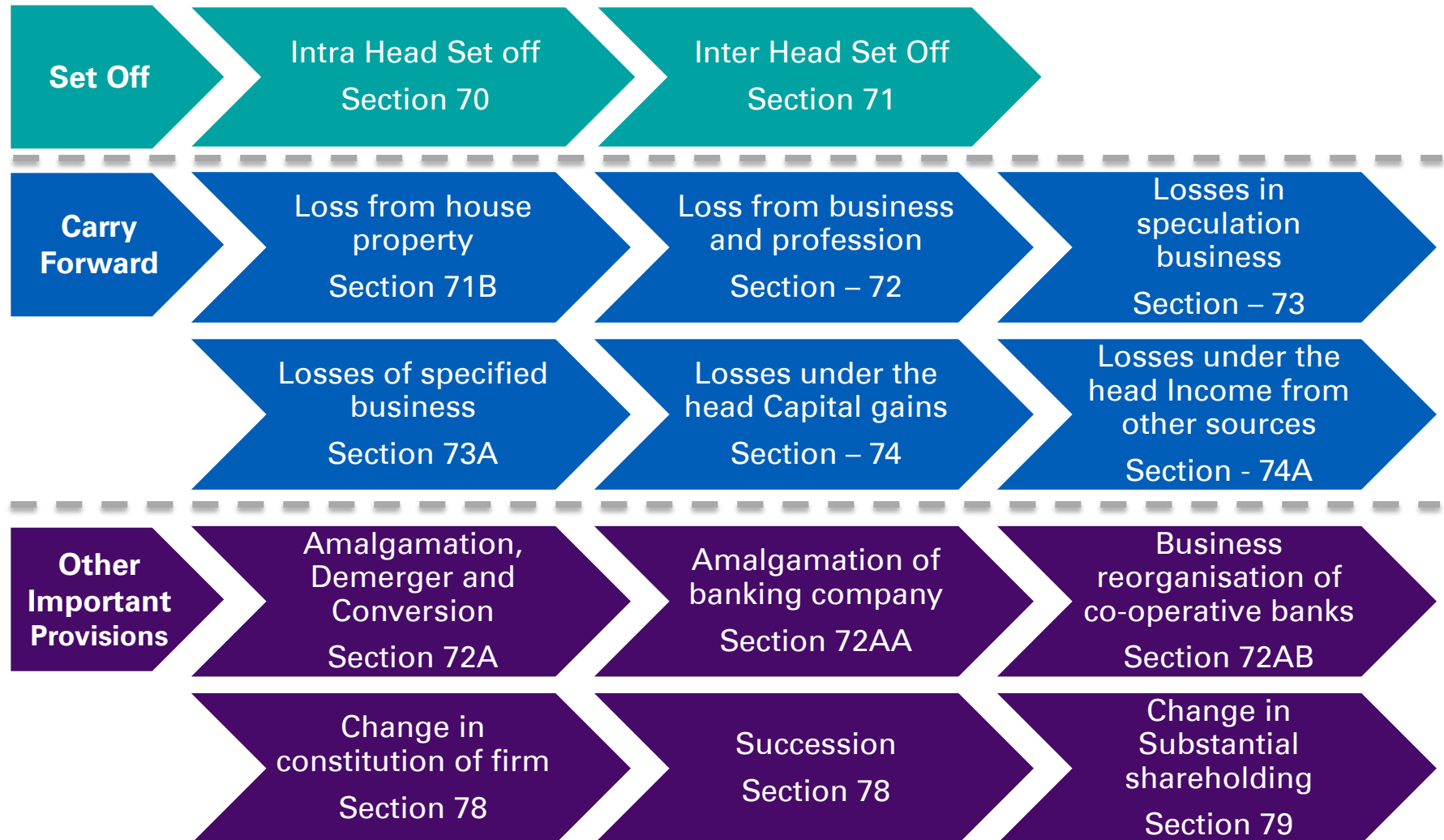


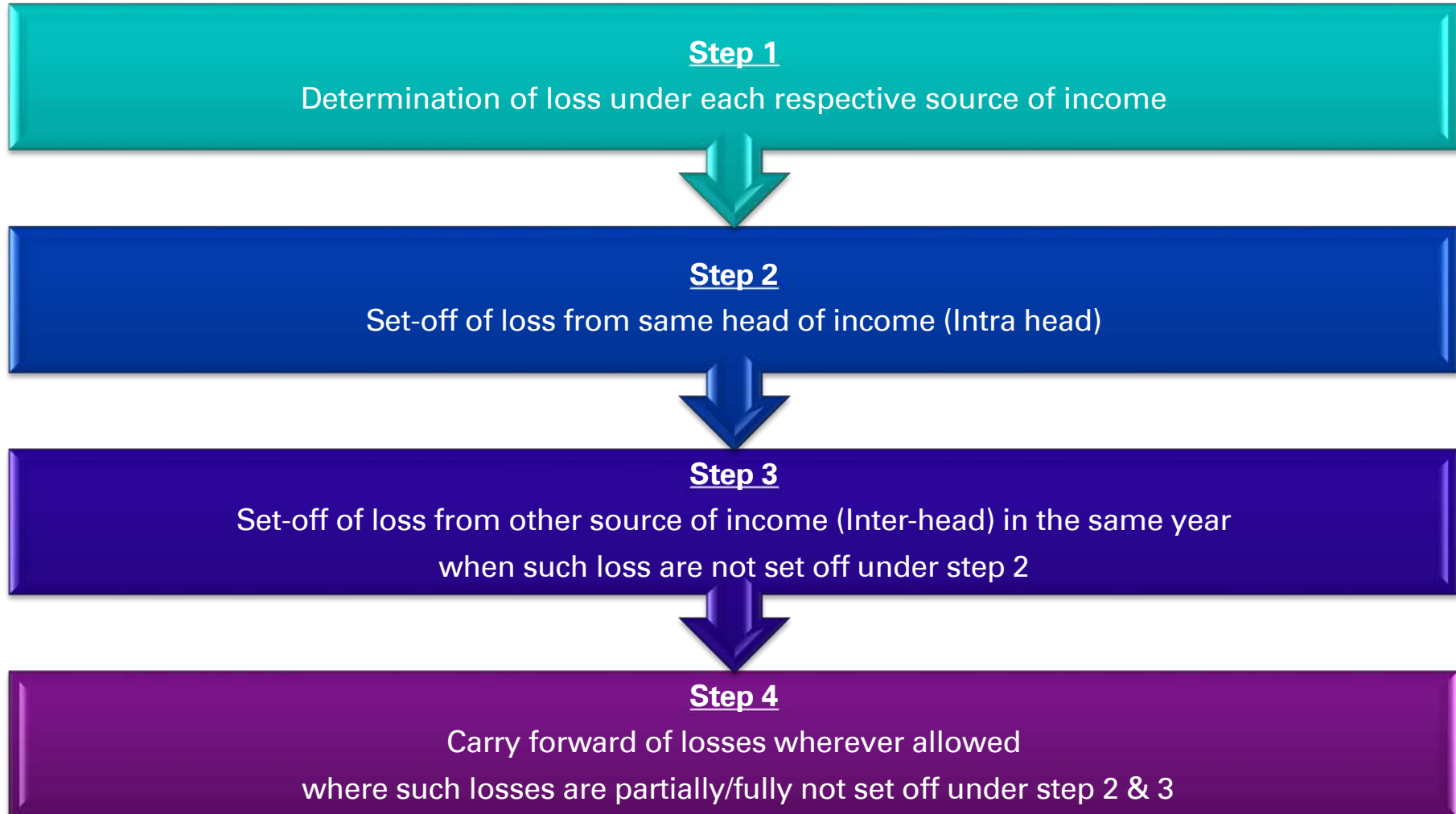
Set off, or Carry Forward & Set Off of Losses

February 2019

Birds Eye View: Applicable sections



Steps for set-off and carry forward of losses



Intra Head Set Off

Set -off of loss from one source against income from other source under the same head of income

Example: A has two business – Plastic Limited & Textile Limited

Particulars	Amount in Rs.
Loss from Textile Limited	3 lacs
Profit from Plastic Limited	5 lacs

Exceptions

- Loss from the activity of owning or maintaining of race horses
- Loss from Speculation business
- Loss from Specified business i.e. business referred in section 35AD
- Long term capital loss cannot be set off against Short term capital gains

Inter Head Set off

If net result in respect of any head of income during any assessment year is a loss, such loss can be set off against the income of any other head of income

Example: A has two business – Plastic Limited & Textile Limited and income from house property as well can be set off with house property income

Particulars	Amount in Rs.
Loss from Textile Limited	5 lacs
Profit from Plastic Limited	3 lacs
House property income	4 lacs

Exceptions

- Loss from the activity of owning or maintaining of race horses
- Loss from Speculation business & specified business u/s 35AD
- Loss from head capital gains
- Loss under the head Profit and gains of business or profession cannot be set-off against salary income

Basic Ground Rules

Whether loss has to be first set off if there is income within the same source?

Whether assessee has an option not to set off loss but to claim carry forward of the same so that it might be set off against income of subsequent years ?

Whether partial set off is permissible when full loss can be otherwise set off?

Whether loss has to be set off against exempt income and only balance amount of loss is allowed to be carried forward?

Set off of losses is a mandatory exercise in computation of income. Neither the assessee nor the tax authorities have any option to defer the set off of losses unless the same cannot be absorbed by the current year's income.

Set off of loss from exempt sources against taxable income

Facts:

- The taxpayer, in its computation of income, had set off long-term capital loss on sale of shares and mutual funds units against the long-term capital gains arising from sale of land.
- The Assessing Officer held that the losses claimed could not be allowed to be set off since the income from long-term capital gain on sale of shares and mutual funds which was exempt under section 10(38).

Whether the long-term capital loss from sale of equity shares (STT paid) can be set off against long-term capital gain from sale of land?

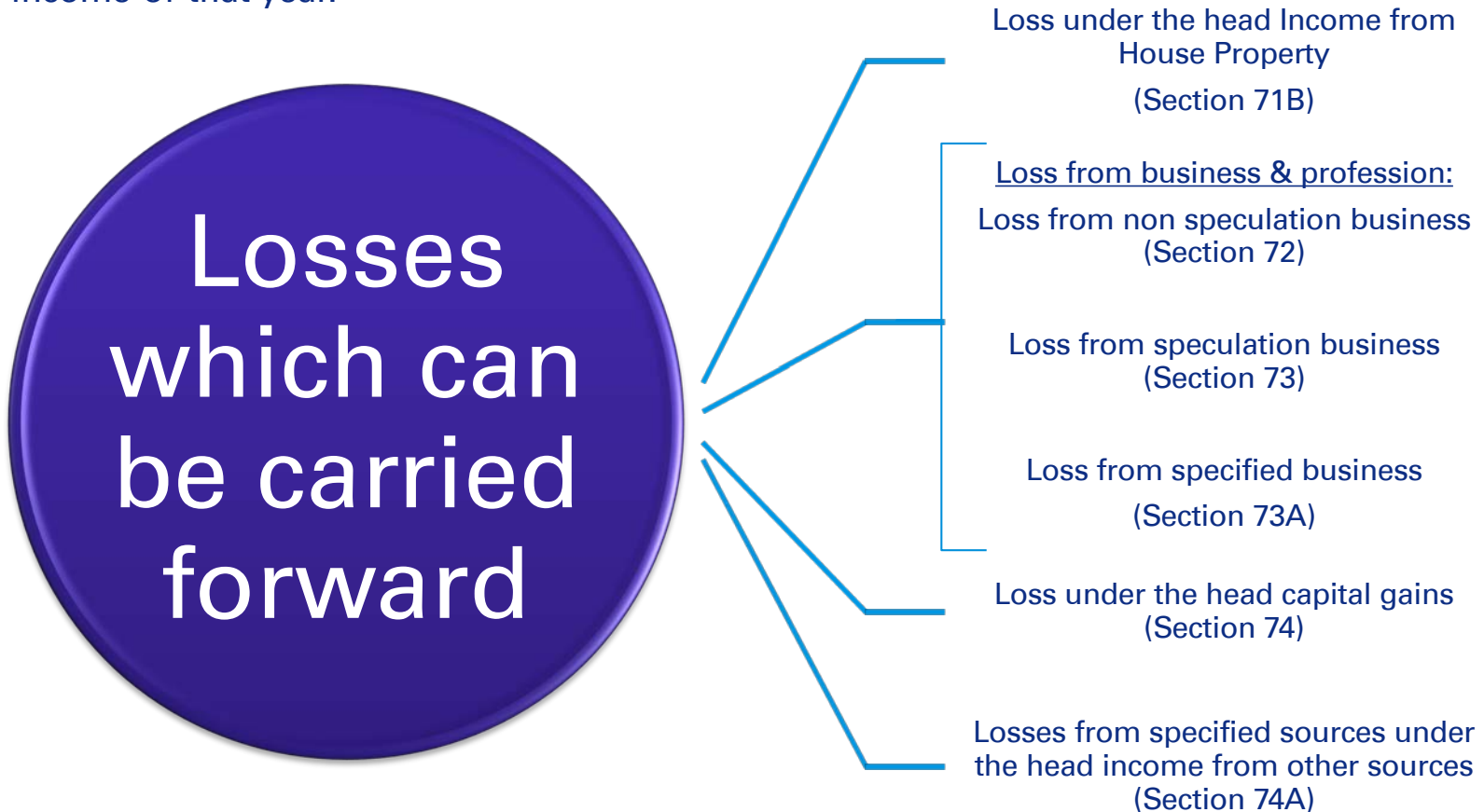
Set off of losses against undisclosed income

Section 115BBE Amendment: Benefit of set off of losses will not be available against income added back under section 68/69/69A/69B/69C/69D

In the Finance bill, 2016 it is proposed no deduction in respect of set off of losses shall be allowed against income charged to tax as unexplained credit/investments/money/expenditure. This amendment is in effect from 1st April, 2017 and will, accordingly, apply in relation to the assessment year 2017-2018 and subsequent years

Carry forward and set-off of losses

If loss cannot be set off under the same head or under the different heads during the same year, such loss may be carried forward to the subsequent years to be set off against income of that year.



Loss under the head income from House Property

Where the loss under the head “Income from House Property” cannot be wholly set off against income from any other head of income, the same would be eligible to be carried forward as under:

Loss under the head income from House Property		
To be set-off against <ul style="list-style-type: none">Income from house property	No. of years loss can be carried to next years <ul style="list-style-type: none">8 years	Is it necessary to submit return of loss in time <ul style="list-style-type: none">May not be required

Case Study : Set-off of house property loss

- X has a salary income of Rs. 10 lacs
- Interest income from FD of Rs 4 lacs
- He owns 2 house properties
 - Property A – Self occupied, Interest paid Rs. 2 lacs
 - Property B – Let out, the annual value is Rs 5 lacs and interest on loan being Rs 6.5 lacs)

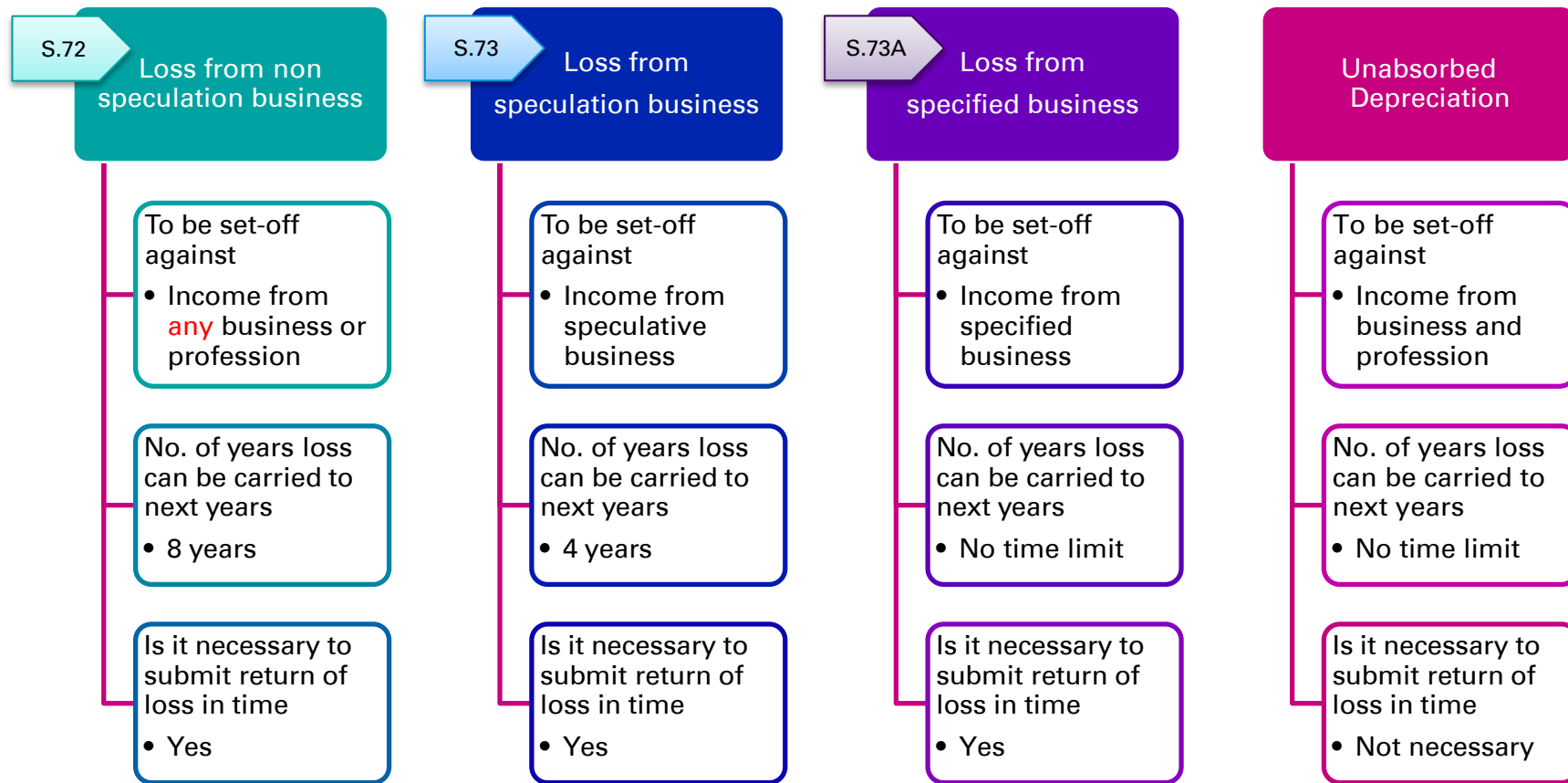
Particulars	AY 2017-18	AY 2018-19
<u>Property A – Self occupied property</u>		
Loss from House property (Interest paid) (A)	(2,00,000)	(2,00,000)
<u>Property B – Let out property</u>		
Annual Value	5,00,000	5,00,000
Less : Standard deduction	1,50,000	1,50,000
Less : Interest on loan	6,50,000	6,50,000
Loss from house property (B)	(3,00,000)	(3,00,000)
Total income from house property (A+B)	(5,00,000)	Restricted to (2,00,000)

Particulars	AY 2017-18	AY 2018-19
I. Salary income	10,00,000	10,00,000
II. Income from other sources (Interest income)	4,00,000	4,00,000
III. Income from house property	(5,00,000)	(2,00,000)
Gross total income	9,00,000	12,00,000

Whether balance HP Loss of Rs. 3 lakhs in AY 2018-19 can be carried forward to future years?

Loss from Business & Profession

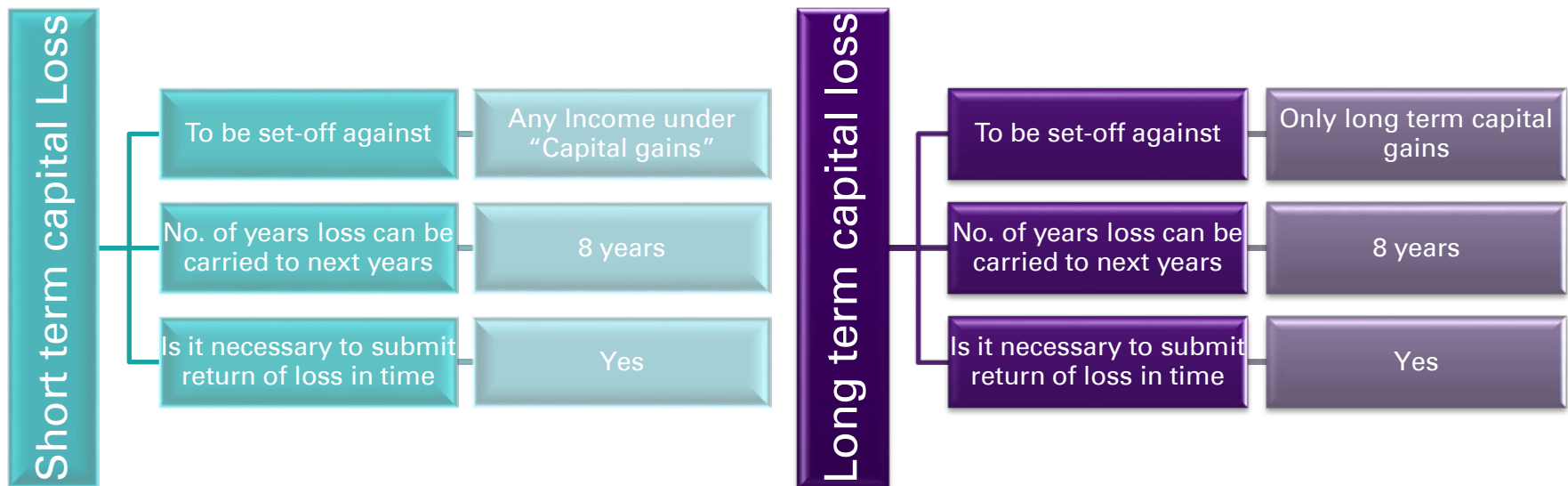
Where the loss under the head “Profits & Gains of Business or Profession” cannot be wholly set off against income from any other head of income, the same would be eligible to be carried forward as under:



For certain companies, the business of purchase and sale of shares of other companies will be deemed to speculative business

Loss under the head Capital Gains

Where the net result of a computation under the head “Capital Gains” is a loss, such capital loss would be eligible to be carried forward as under:



CIRCULAR 9/2015 [F.NO.312/22/2015-OT], DATED 9-6-2015

Delay in filing claim for refund/ carry forward of losses may be condoned by Principle CIT/CCIT/CBDT on application being made, subject to criteria and guidelines prescribed

Loss under the head Capital Gains

Facts:

- The assessee sold certain depreciable assets which were held for more than 36 months.
- The gain on such sale was shown as long term capital gain and was set off against the brought forward long term capital loss.

Whether long term capital loss can be set off against capital gains arising on sale of depreciable assets deemed as short term capital gain by virtue of deeming provision under section 50 of the Act?

Loss under the head Capital Gains

Facts:

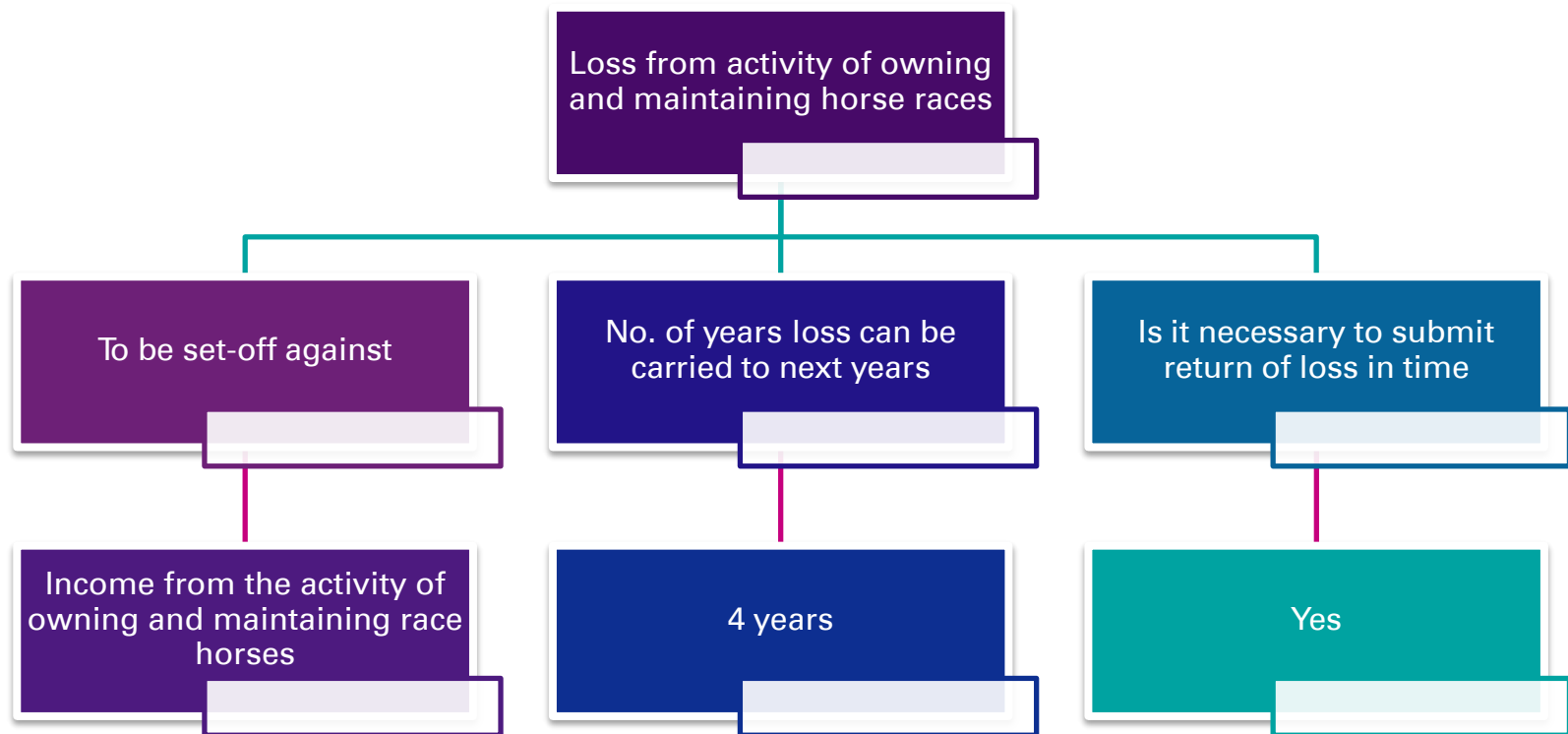
- The taxpayer claimed set off of brought forward business losses against STCG on sale of depreciable assets.
- The AO being of the view that as per section 72 b/f business losses can be set off only against profits and gains of business or profession, issued SCN to the assessee.
- In reply, the assessee contended that profit realized on sale of business assets, being business income, unabsorbed business loss could be set off against the said profit.

Whether brought forward business losses can be set off against capital gains arising on sale of depreciable assets?

Loss from specified sources under the head Income From Other Sources

Loss from activity of owning and maintaining horse races shall be set off only against income from activity of owning and maintaining horse races.

Where loss from such specified source cannot be wholly set off against income from such specified source, the same would be eligible to be carried forward as under:



An Overview of Intra head & Inter head Set off

<div style="border: 1px solid black; padding: 5px; display: inline-block;"> Income → ↓ Loss </div>		Salary	House Property	Business / Professional Income		Capital Gains		Other sources		
				Speculative	Non-Speculative	Long term	Short term	Owning & maintaining of race horses	Casual Winnings	Other
Salary		There cannot be loss in Salary								
House Property (# Restricted to Rs 2 Lakhs)		√#	√	√#	√#	√#	√#	√#	X	√#
Business / Professional Income	Speculative	X	X	√	X	X	X	X	X	X
	Non-Speculative	X	√	√	√	√	√	√	X	√
Capital Gains	Long term	X	X	X	X	√	X	X	X	X
	Short term	X	X	X	X	√	√	X	X	X
Other sources	Owning & maintaining of race horses	X	X	X	X	X	X	√	X	X
	Casual Winnings	X	X	X	X	X	X	X	√	X
	Other	√	√	√	√	√	√	√	X	√

Carry forward and set off Amalgamation, Demerger & Conversion

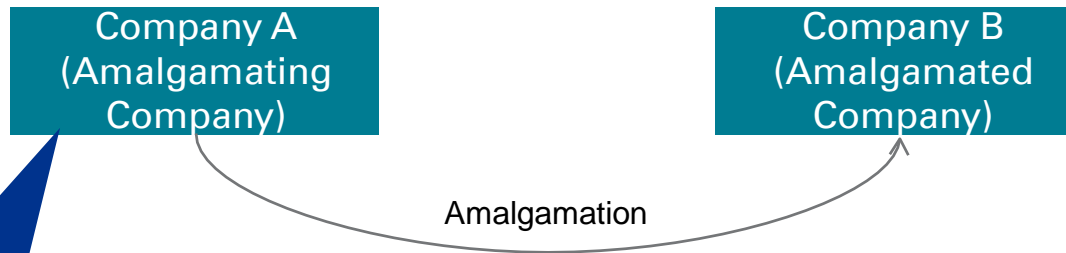
Although carry forward and set off of loss is generally permitted to the person who has incurred losses (unabsorbed depreciation and accumulated business loss), there are certain exceptions as under:

Exceptions

- Amalgamation of Companies (Sec 72A)
- Amalgamation of banking company (Sec 72AA)
- Demerger [Sec 72A (4)]
- Conversion of company into limited liability partnership [Sec 72A(6A)]
- Conversion of proprietary concern / firm into Company [Sec 72A(6)]
- Amalgamation or demerger of co-operative banks (Sec 72AB)
- Succession by way of Inheritance (Section 78)

Amalgamation

Accumulated business loss and unabsorbed depreciation of the Amalgamating Company shall be deemed to be the accumulated loss and unabsorbed depreciation of the Amalgamated Company for the previous year in which the amalgamation is effected



Applicable to amalgamation of

- Company owning an industrial undertaking, ship, hotel with another company
- Banking company with specified banks
- Public sector company engaged in the operations of aircrafts with other public sector company engaged in the similar business

In addition to above other specific conditions need to be satisfied

Amalgamation - Conditions to be satisfied

Amalgamating Company

Engaged in business in which accumulated loss has occurred and depreciation remains unabsorbed for 3 or more years

Has held continuously as on the date of amalgamation at least $\frac{3}{4}$ th of the book value of fixed assets held by it two years prior to date of amalgamation

Amalgamated Company

Holds $\frac{3}{4}$ th of the book value of fixed assets for 5 years from date of amalgamation

Continues business of amalgamating co. for at least 5 years from the date of amalgamation

To achieve production of at least 50% of the installed capacity of the undertaking before the end of 4 years from the date of amalgamation and to maintain the said minimum level till the end of 5 years from the date of amalgamation

To furnish a certificate in Form No.62, duly verified by an accountant from the year of achieving 50% level of production upto completion of 5 years from amalgamation

Whether fresh lease of life available in case of amalgamation?

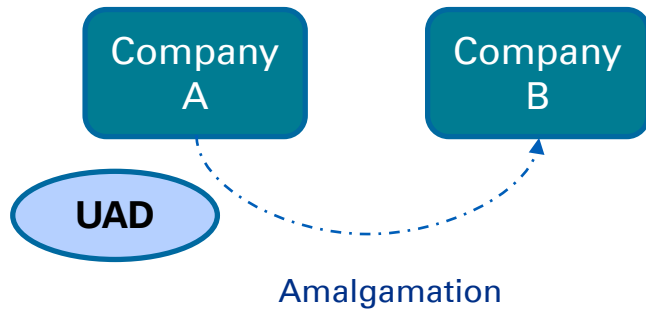
Amalgamation - Violation

Implications upon violation of conditions by Amalgamated Company

Implications
of Violation
of Conditions

The set off of loss or allowance of depreciation made in any previous year in the hands of amalgamated company shall be deemed to be income of amalgamated company chargeable to tax for the year in which such conditions are not complied with.

Case study : Amalgamation

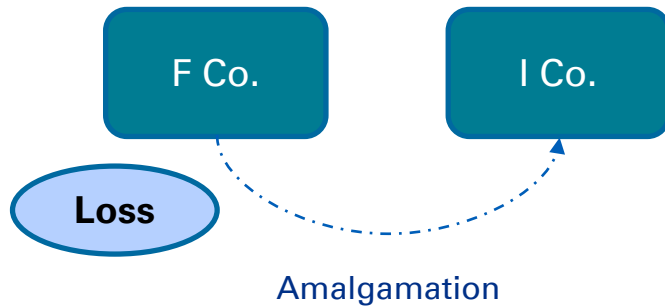


Facts:

- Company A is engaged in the business of providing carriage services
- Company B is engaged in the business of steel manufacturing
- In order to enjoy the benefits of synergy Company A is getting amalgamated with Company B
- Company A has certain amount of unabsorbed depreciation

Whether unabsorbed depreciation of Company A shall be available in the hands of Company B on amalgamation?

Case study : Amalgamation



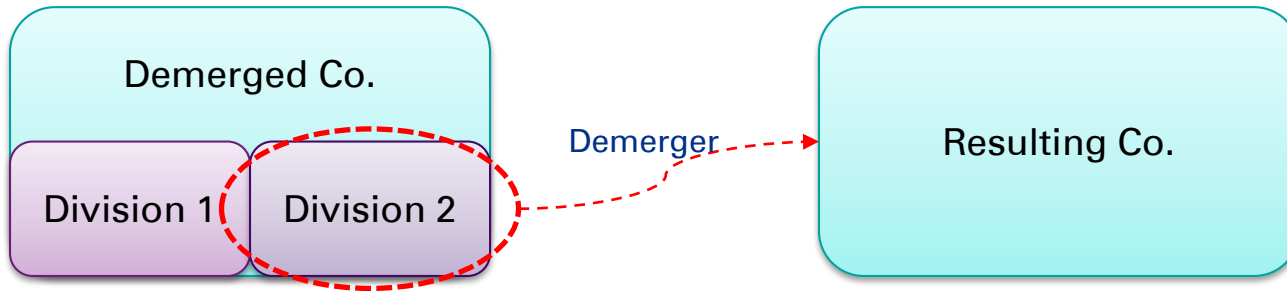
Facts:

- F Co. to be amalgamated with I Co.
- F Co. has brought forward business losses
- F Co. is engaged in the business of bottle manufacturing

Whether brought forward losses of F Co. be allowed to be carried forward & set off u/s 72A in hands of I Co.?

Demerger

In case of de-merger, the accumulated loss and unabsorbed depreciation will be allowed to be carried forward and set off in the hands of the resulting company

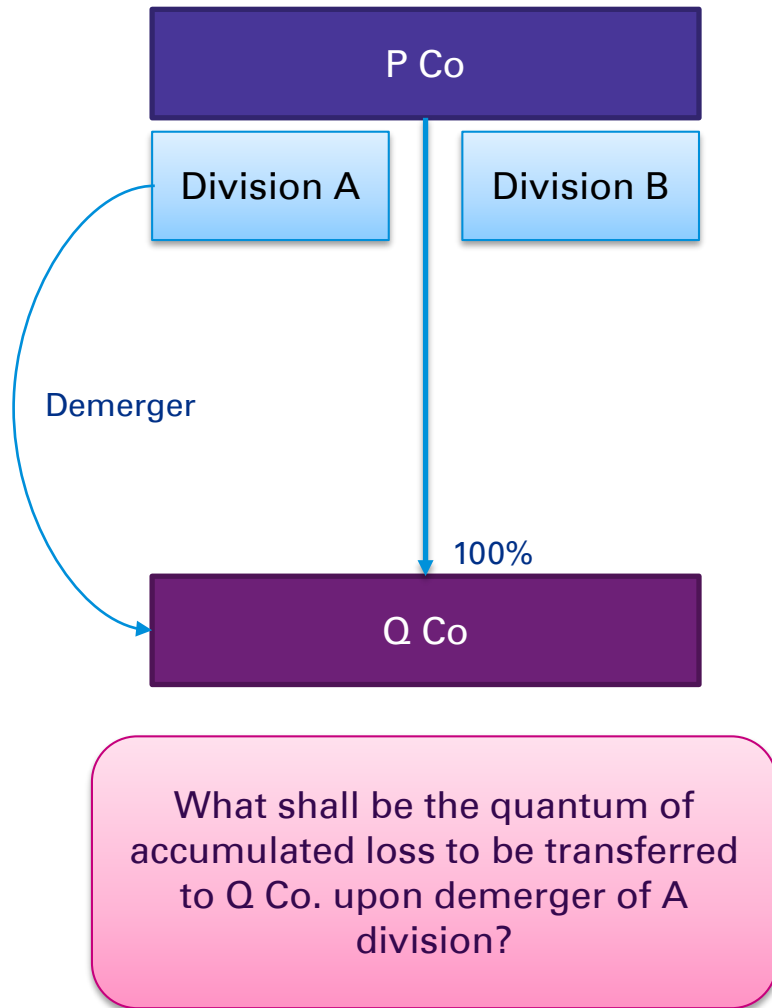


Quantum of loss and depreciation to be carried forward

- Entire loss and unabsorbed depreciation which is directly relatable to the undertakings transferred
- Loss and unabsorbed depreciation which is not directly relatable to the undertaking transferred
 - To be apportioned in the proportion in which **ASSETS** of the undertakings are retained by Demerged Company and transferred to the Resulting Company

Whether fresh lease of life available in case of demerger?

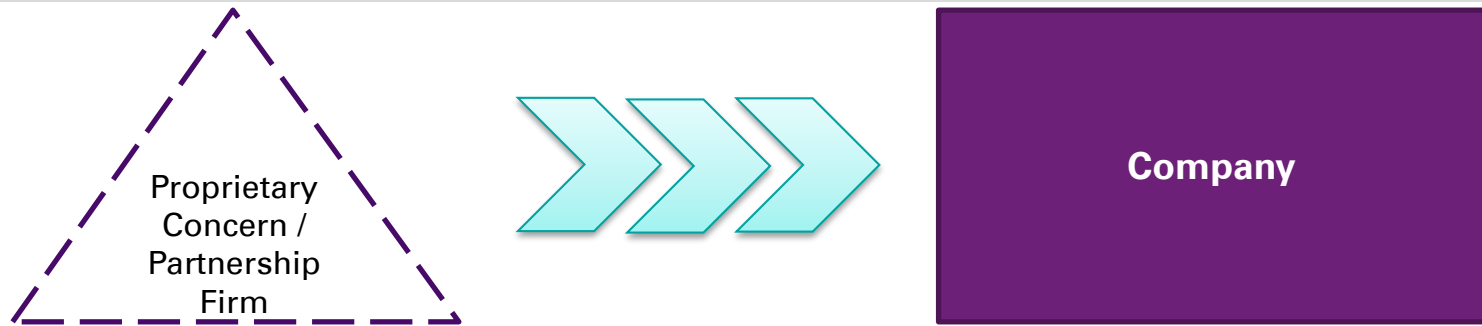
Case study : Demerger



Facts:

- P Co operates two divisions, namely, Division A and Division B
- It is proposed to demerge Division A of P Co to Q Co
- Total assets : Division A – Rs 100 crs
Division B – Rs 200 crs
- P Co has accumulated losses as following:
 - Specific : Division A – Rs. 10 crs
Division B – Rs. 5 crs
 - General Loses not attributable to any division : Rs. 30 crs

Conversion of proprietary concern / firm into a company



In case of succession of business where a firm / proprietary concern is succeeded by a company [fulfilling conditions u/s 47 (xiii) and (xiv)], the accumulated loss and the unabsorbed depreciation of such firm / proprietary concern, shall be deemed to be the loss and unabsorbed depreciation of the successor company for the previous year in which business reorganisation took place

If conditions u/s 47 (xiii) or (xiv) are not satisfied, the brought forward loss and unabsorbed depreciation which has been set off shall be treated as income of the successor company chargeable to tax in the year in which such conditions are not complied with

S.47

S.72A

Conversion of Company into LLP



In case of re-organisation of business whereby a private company or unlisted public company is succeeded by limited liability partnership (LLP) [fulfilling the conditions u/s Section 47 (xiiib)], the accumulated loss and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or unabsorbed depreciation of the successor LLP for the purpose of the previous year in which business re-organisation was affected

If conditions u/s 47 (xiiib) are not satisfied, the brought forward loss and unabsorbed depreciation which has been set off shall be treated as income of the successor LLP chargeable to tax in the year in which such conditions are not complied with

S.47

S.72A

Change in constitution of a firm

Where there is a change in the constitution of a firm, so much of the loss proportionate to the share of a retired or deceased partner remaining unabsorbed, shall not be allowed to be carried forward by the firm. However, unabsorbed depreciation can be carried forward

Cast Study:

- M/s ABC, a firm, consists of 3 partners (A, B and C) having equal profit & loss sharing ratio during the year ended on 31 March 2018. The assesses business loss of the firm for the AY 2018-19 which it is entitled to carry forward amounts to Rs. 3 lakh
- From 1 April 2018, A, B and C has changed their profit & loss sharing ratio to 40:40:20 respectively
- Can ABC carry forward such losses of Rs. 3 lakh post change in their profit & loss sharing ratio?

Succession

Where any person carrying on any business or profession has been succeeded in such capacity by:

- Any person other than by way of inheritance – loss of predecessor cannot be carried forward
- Any person by way of Inheritance - loss of predecessor can be carried forward

Where there are only two partners, dissolution of Firm by death of one partner, cannot involve succession by inheritance.

Case study:

- Mr. A, was carrying on a business as a sole proprietor. A had determined a loss of Rs. 1 Lakh
- On his death, his legal heirs decide to continue the same business by forming a partnership firm
- Does the firm, consisting of all the legal heirs of A, get a right to carry forward the loss of Rs. 1 Lakh

Change in substantial shareholding

Section 79 is applicable to companies other than companies in which public are substantially interested (i.e. closely held companies)

Carry forward/ set off of accumulated business losses is not allowed in case common shareholding of 51% is not maintained as on last day of the current financial year and last day of the year in which such loss is incurred

Shares having voting power shall be considered

Does not affect losses of the year in which change in shareholding takes place

UAD is not affected by change in substantial shareholding

Does not apply in case of death of a shareholder or a gift by a shareholder to his relative

Not applicable in case of change in shareholding of an Indian subsidiary of a Foreign Co. on account of amalgamation or demerger of the Foreign Co.

Not applicable to a company whose shareholding has changed pursuant to resolution plan approved under IBC

Whether section 79 is to be tested in year of change or set off ?

S.79

Change in substantial shareholding

In case of a company other than a company in which public is substantially interested



Company being an eligible start up



Loss incurred during the period of 7 years from the year of incorporation



Shall be carried forward and set off if



All the shareholders holding shares on last day of the previous year in which loss was incurred continue to hold those shares on the last day of current previous year

Case Study : Change in substantial shareholding

Scenario 1

SHP	Year 1 (Loss)	Year 2 (Profit)	Year 3 (Profit)
X	50%	-	50%
Y	50%	50%	50%
Z	-	50%	-

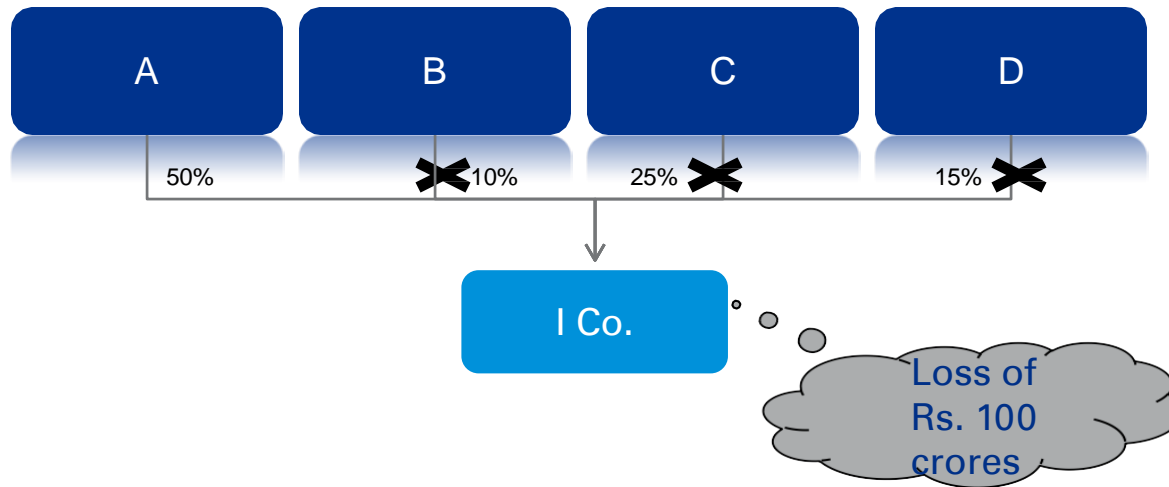
Scenario 2

SHP	Year 1 (Loss)	Year 2 (Loss)	Year 3 (Profit)
X	50%	-	50%
Y	50%	50%	50%
Z	-	50%	-

If in 3rd year earlier shareholding is restored, can loss be available for set off ?

- Section requires comparison between shareholding pattern on the last day of the previous year in which the set-off is claimed with the last day of the previous year in which the loss is incurred

Case Study : Change in substantial shareholding



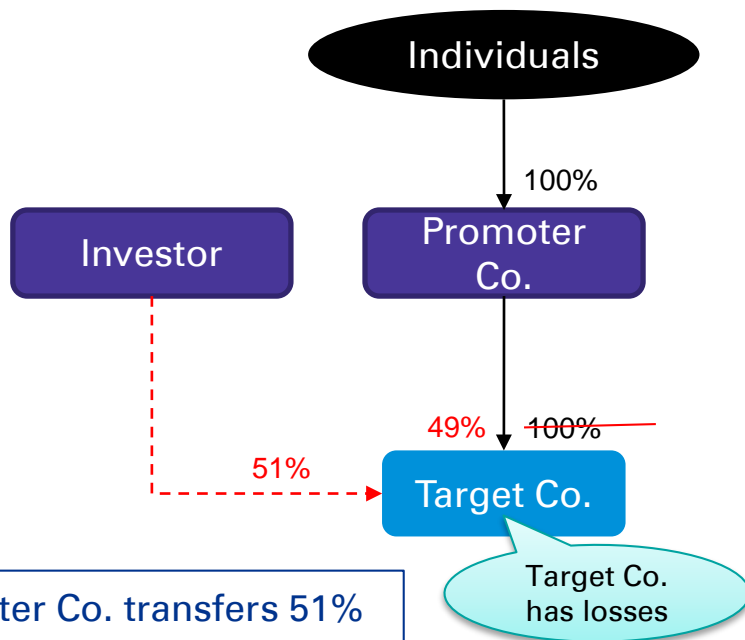
- I Co. is a joint venture between A, B, C and D
- Losses in the books of I Co – Rs. 100 crs
- A desires to purchase complete equity stake from B, C and D

Will I Co. be allowed loss of Rs. 100 crs if A purchases all shares of B, C and D?

Case Study : Change in substantial shareholding

A

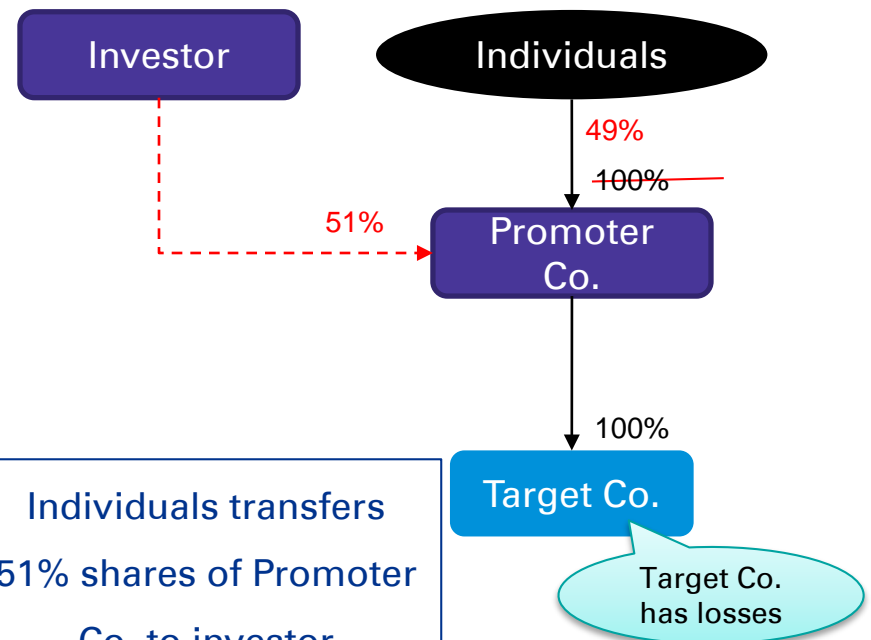
Change in shareholding at Target Co. Level



Promoter Co. transfers 51% shares of A Co. to Investor

B

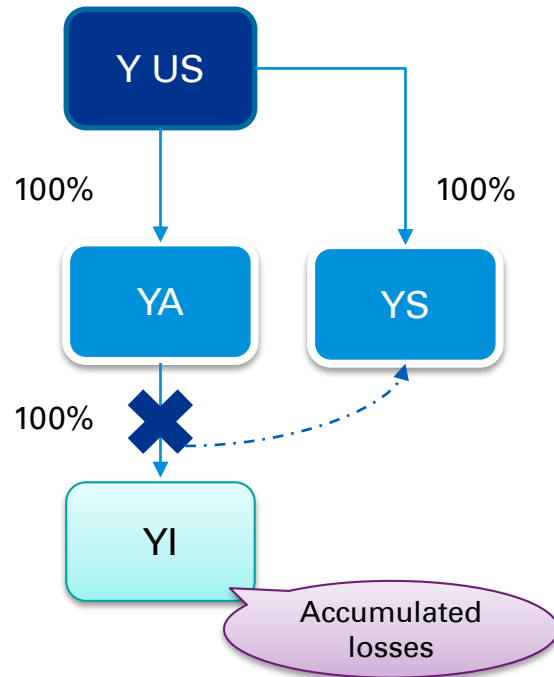
Change in shareholding at Promoter Co. Level



Individuals transfers 51% shares of Promoter Co. to investor

Applicability of Section 79?

Case Study : Change in substantial shareholding



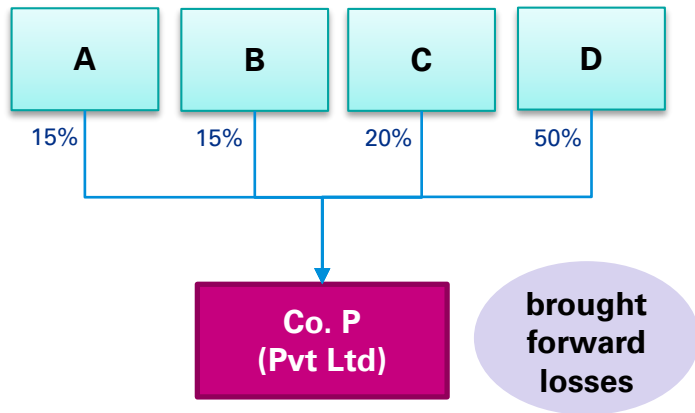
Facts:

- Company YI is an Indian Company, WOS of Company YA
- Company YA is WOS of Company Y US
- Company YS is sister subsidiary of Company YA
- Company YI has accumulated business losses
- Shares of Company YI were transferred to Company YS

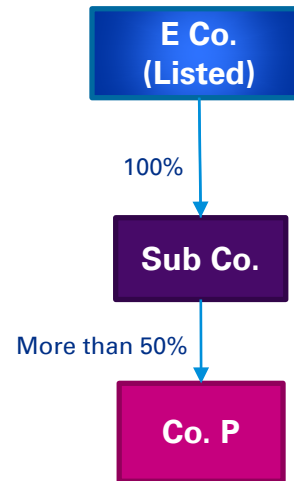
Whether loss of Company YI would be lapsed?

Case Study : Change in substantial shareholding

Pre transfer



Post transfer



Facts

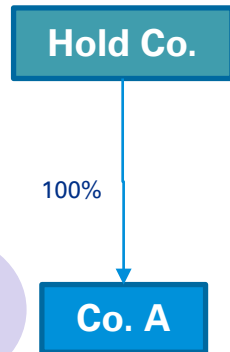
- A, B, C and D are individuals holding shares of Co. P
- Co. P has brought forward business loss
- Sub Co. acquires more than 50% in Co. P from existing shareholders
- Sub Co. is WOS of E Co. which is listed company

Whether loss of Co. P can be carried forward upon change in direct shareholding in view of provisions of Sec. 79 (in view of it being indirect subsidiary of Public / Listed Co.)?

Case Study : Change in substantial shareholding

Pre transfer

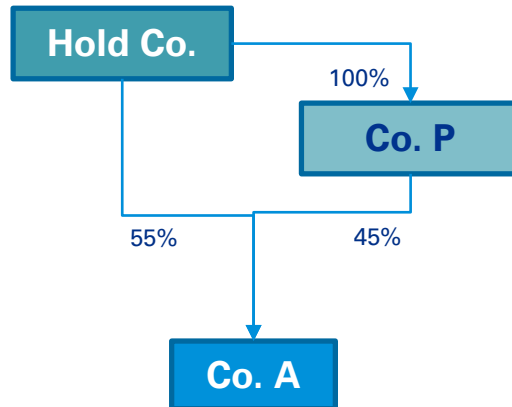
Year 1



brought forward losses

Post transfer

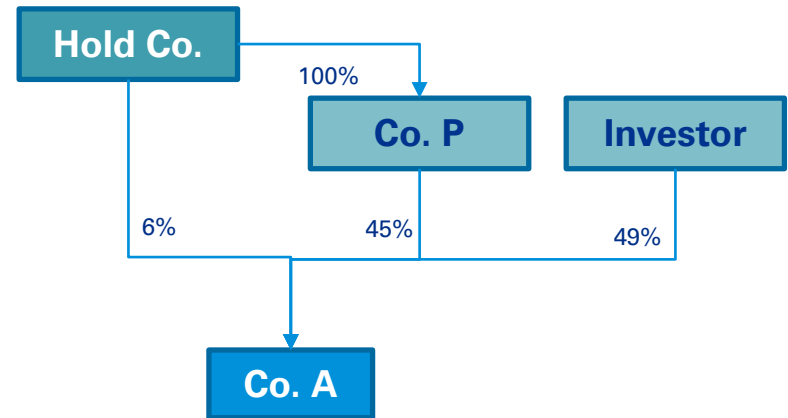
Year 2



Whether loss of Co. A could be carried forward in Year 2 ?

Post transfer

Year 3



What about Year 3 ?

Facts

- Co. A is held 100% by Hold Co. There are brought forward losses in Co. A
- In year 2, Hold Co. transfers 45% shareholding in Co. A to another group company Co. P (WOS of Hold Co.)
- In Year 3, Hold Co. transfers 49% shareholding in Co. A to Investor thereby reducing its shareholding to 6%

Section 72A v/s section 79

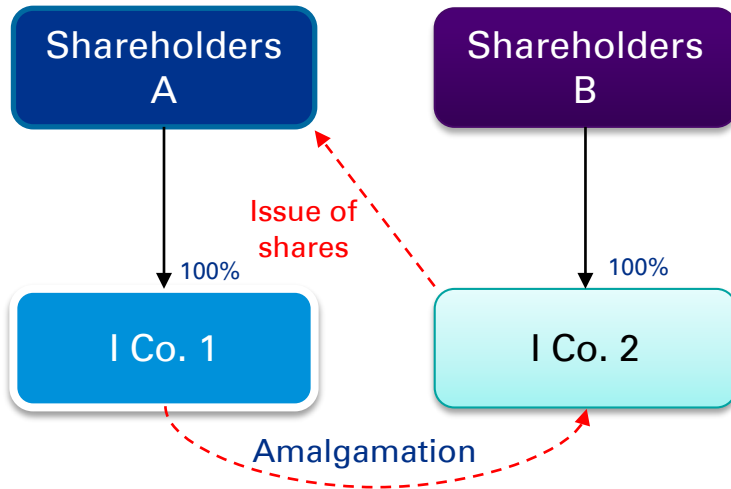
- When a private company having losses merges into another company
- Whether provisions of section 72A will be applicable or section 79?
 - Provisions of section 72A will be applicable and not section 79
 - Section 72A contains a non – obstante clause overriding all other provisions of the Act
 - Section 72A specifically related to amalgamations would cover all cases of amalgamations and override all other provisions.

S.72A

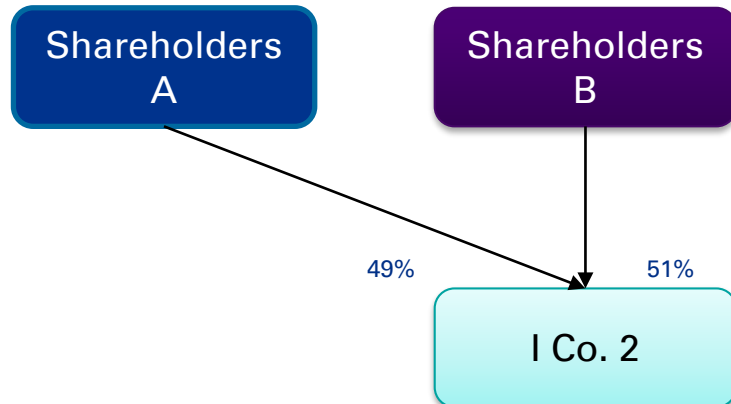
S.79

Case Study: Section 72A v/s section 79

Pre Amalgamation Structure



Post Amalgamation Structure



Facts of the case

- I Co. 1, having losses, and being a closely held company, proposes to merge into I Co. 2
- I Co. 2 has losses of Rs. 10 crores

Which Section to apply – Section 72A or Section 79?

S.72A

S.79



Thank You

Presented by:
CA Sumeet Agrawal

Assisted by:
CA Janak Shah

S.70 Set off of loss from one source against income from another source under the same head of income.

- (1) Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income, other than "Capital gains", is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.
- (2) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset.
- (3) Where the result of the computation made for any assessment year under sections 48 to 55 in respect of any capital asset (other than a short-term capital asset) is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset not being a short-term capital asset.

S.71 Set off of loss from one head against income from another.

- (1) Where in respect of any assessment year the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has no income under the head "Capital gains", he shall, subject to the provisions of this Chapter, be entitled to have the amount of such loss set off against his income, if any, assessable for that assessment year under any other head.
- (2) Where in respect of any assessment year, the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has income assessable under the head "Capital gains", such loss may, subject to the provisions of this Chapter, be set off against his income, if any, assessable for that assessment year under any head of income including the head "Capital gains" (whether relating to short-term capital assets or any other capital assets).
- (2A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss and the assessee has income assessable under the head "Salaries", the assessee shall not be entitled to have such loss set off against such income.
- (3) Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to have such loss set off against income under the other head.
- (3A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to set off such loss, to the extent the amount of the loss exceeds two lakh rupees, against income under the other head.
- (4) Where the net result of the computation under the head "Income from house property" is a loss, in respect of the assessment years commencing on the 1st day of April, 1995 and the 1st day of April, 1996, such loss shall be first set off under sub-sections (1) and (2) and thereafter the loss referred to in section 71A shall be set off in the relevant assessment year in accordance with the provisions of that section.

S.71B Carry forward and set off of loss from house property.

Where for any assessment year the net result of computation under the head "Income from house property" is a loss to the assessee and such loss cannot be or is not wholly set off against income from any other head of income in accordance with the provisions of section 71, so much of the loss as has not been so set-off or where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and—

(i) be set off against the income from house property assessable for that assessment year; and

(ii) the loss, if any, which has not been set off wholly, the amount of loss not so set off,

shall be carried forward to the following assessment year, not being more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

S.72 Carry forward and set off of business losses.

- (1) Where for any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss to the assessee, not being a loss sustained in a speculation business, and such loss cannot be or is not wholly set off against income under any head of income in accordance with the provisions of section 71, so much of the loss as has not been so set off or, where he has no income under any other head, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—
 - (i) it shall be set off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year ;
 - (ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on :

Provided that where the whole or any part of such loss is sustained in any such business as is referred to in section 33B which is discontinued in the circumstances specified in that section, and, thereafter, at any time before the expiry of the period of three years referred to in that section, such business is re-established, reconstructed or revived by the assessee, so much of the loss as is attributable to such business shall be carried forward to the assessment year relevant to the previous year in which the business is so re-established, reconstructed or revived, and—

- (a) it shall be set off against the profits and gains, if any, of that business or any other business carried on by him and assessable for that assessment year; and
 - (b) if the loss cannot be wholly so set off, the amount of loss not so set off shall, in case the business so re-established, reconstructed or revived continues to be carried on by the assessee, be carried forward to the following assessment year and so on for seven assessment years immediately succeeding.
- (2) Where any allowance or part thereof is, under sub-section (2) of section 32 or sub-section (4) of section 35, to be carried forward, effect shall first be given to the provisions of this section.
- (3) No loss (other than the loss referred to in the proviso to sub-section (1) of this section) shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

S.72A Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

(1) Where there has been an amalgamation of—

(a) a company owning an industrial undertaking or a ship or a hotel with another company; or

(b) a banking company referred to in clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a specified bank; or

(c) one or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business,

then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

(2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless—

(a) the amalgamating company—

(i) has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;

(ii) has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation;

(b) the amalgamated company—

(i) holds continuously for a minimum period of five years from the date of amalgamation at least three-fourths of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;

(ii) continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation;

(iii) fulfils such other conditions as may be prescribed¹⁴ to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.

(3) In a case where any of the conditions laid down in sub-section (2) are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax for the year in which such conditions are not complied with.

S.72A Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

- (4) Notwithstanding anything contained in any other provisions of this Act, in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall—
- (a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company;
 - (b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.
- (5) The Central Government may, for the purposes of this Act, by notification in the Official Gazette, specify such conditions as it considers necessary to ensure that the demerger is for genuine business purposes.
- (6) Where there has been reorganisation of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in clause (xiii) of section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in clause (xiv) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, shall be deemed to be the loss or allowance for depreciation of the successor company for the purpose of previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly :

Provided that if any of the conditions laid down in the proviso to clause (xiii) or the proviso to clause (xiv) to section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor company, shall be deemed to be the income of the company chargeable to tax in the year in which such conditions are not complied with.

- (6A) Where there has been reorganisation of business whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (xiiib) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor limited liability partnership for the purpose of the previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly :

Provided that if any of the conditions laid down in the proviso to clause (xiiib) of section 47 are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the successor limited liability partnership, shall be deemed to be the income of the limited liability partnership chargeable to tax in the year in which such conditions are not complied with.

S.72A Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

(7) For the purposes of this section,—

- (a) "accumulated loss" means so much of the loss of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, would have been entitled to carry forward and set off under the provisions of section 72 if the reorganisation of business or conversion or amalgamation or demerger had not taken place;
- (aa) "industrial undertaking" means any undertaking which is engaged in—
 - (i) the manufacture or processing of goods; or
 - (ii) the manufacture of computer software; or
 - (iii) the business of generation or distribution of electricity or any other form of power; or
 - (iiia) the business of providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broadband network and internet services; or
 - (iv) mining; or
 - (v) the construction of ships, aircrafts or rail systems;
- (b) "unabsorbed depreciation" means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the reorganisation of business or conversion or amalgamation or demerger had not taken place;
- (c) "specified bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955) or a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959) or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980).

S.73 Losses in speculation business.

- (1) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.
- (2) Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—
 - (i) it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year; and
 - (ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.
- (3) In respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (2) of section 72 shall apply in relation to speculation business as they apply in relation to any other business.
- (4) No loss shall be carried forward under this section for more than four assessment years immediately succeeding the assessment year for which the loss was first computed.

Explanation.—Where any part of the business of a company (other than a company whose gross total income consists mainly of income which is chargeable under the heads "Interest on securities", "Income from house property", "Capital gains" and "Income from other sources", or a company the principal business of which is the business of trading in shares or banking or the granting of loans and advances) consists in the purchase and sale of shares of other companies, such company shall, for the purposes of this section, be deemed to be carrying on a speculation business to the extent to which the business consists of the purchase and sale of such shares.

S.73A Carry forward and set off of losses by specified business.

- (1) Any loss, computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business.
- (2) Where for any assessment year any loss computed in respect of the specified business referred to in sub-section (1) has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee has no income from any other specified business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—
 - (i) it shall be set off against the profits and gains, if any, of any specified business carried on by him assessable for that assessment year; and
 - (ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

S.74 Losses under the head "Capital gains".

- (1) Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss to the assessee, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and—
 - (a) in so far as such loss relates to a short-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset;
 - (b) in so far as such loss relates to a long-term capital asset, it shall be set off against income, if any, under the head "Capital gains" assessable for that assessment year in respect of any other capital asset not being a short-term capital asset;
 - (c) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.
- (2) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.
- (3) [Omitted by the Finance Act, 2002, w.e.f. 1-4-2003.]

S.74A Losses from certain specified sources falling under the head "Income from other sources".

- (1) [* * *]
- (2) [* * *]
- (3) In the case of an assessee, being the owner of horses maintained by him for running in horse races (such horses being hereafter in this sub-section referred to as race horses), the amount of loss incurred by the assessee in the activity of owning and maintaining race horses in any assessment year shall not be set off against income, if any, from any source other than the activity of owning and maintaining race horses in that year and shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year and—
- (a) it shall be set off against the income, if any, from the activity of owning and maintaining race horses assessable for that assessment year :
- Provided that the activity of owning and maintaining race horses is carried on by him in the previous year relevant for that assessment year; and
- (b) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on; so, however, that no portion of the loss shall be carried forward for more than four assessment years immediately succeeding the assessment year for which the loss was first computed.

Explanation.— For the purposes of this sub-section—

- (a) "amount of loss incurred by the assessee in the activity of owning and maintaining race horses" means—
- (i) in a case where the assessee has no income by way of stake money, the amount of expenditure (not being in the nature of capital expenditure) laid out or expended by him wholly and exclusively for the purposes of maintaining race horses;
- (ii) in a case where the assessee has income by way of stake money, the amount by which such income falls short of the amount of expenditure (not being in the nature of capital expenditure) laid out or expended by the assessee wholly and exclusively for the purposes of maintaining race horses;
- (b) "horse race" means a horse race upon which wagering or betting may be lawfully made;
- (c) "income by way of stake money" means the gross amount of prize money received on a race horse or race horses by the owner thereof on account of the horse or horses or any one or more of the horses winning or being placed second or in any lower position in horse races.

S.78

Carry forward and set off of losses in case of change in constitution of firm or on succession.

- (1) Where a change has occurred in the constitution of a firm, nothing in this Chapter shall entitle the firm to have carried forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year.
- (2) Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, nothing in this Chapter shall entitle any person other than the person incurring the loss to have it carried forward and set off against his income.

Notwithstanding anything contained in this Chapter, where a change in shareholding has taken place in a previous year,—

- (a) in the case of a company not being a company in which the public are substantially interested and other than a company referred to in clause (b), no loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, unless on the last day of the previous year, the shares of the company carrying not less than fifty-one per cent of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than fifty-one per cent of the voting power on the last day of the year or years in which the loss was incurred;
- (b) in the case of a company, not being a company in which the public are substantially interested but being an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—
 - (i) continue to hold those shares on the last day of such previous year; and
 - (ii) such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated:

Provided that nothing contained in this section shall apply to a case where a change in the said voting power and shareholding takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift:

Provided further that nothing contained in this section shall apply to any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company:]

Provided also that nothing contained in this section shall apply to a company where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (31 of 2016), after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

S.80 Submission of return for losses.

Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139, shall be carried forward and set off under sub-section (1) of section 72 or sub-section (2) of section 73 17[or sub-section (2) of section 73A] or sub-section (1) or sub-section (3) of section 74 or sub-section (3) of section 74A.

Conversion of proprietary concern / firm into a company

Succession of Firm to Company

- All assets and liabilities need to be transferred
- All partners to become shareholders (shareholding to be in proportion of balance in capital account)
- No other consideration (in any form) to be given to partners
- Shareholding of such partners not to be reduced below 50% for 5 years

Succession of Proprietary Concern to Company

- All assets and liabilities need to be transferred
- Shareholding of such Sole Proprietor not to be reduced below 50% for 5 years
- No other consideration (in any form) to be given to sole proprietor

Conversion of Company into LLP

Pre Conversion Condition

- Turnover / gross receipts / sales in company in preceding 3 years not to exceed INR 60 Lakhs annually
- The total book value of the assets of the company must not exceed INR 5 Crores in any of the three preceding years

On Conversion Condition

- All asset and liabilities need to be transferred
- All shareholders to become partners (profit sharing ratio to be same as shareholding pattern)
- No other consideration (in any form) to be given to shareholders

Post Conversion Condition

- Profit sharing ratio of such shareholders not to be reduced below 50% for 5 years
- No profits to be distributed to shareholder out of accumulated balance for a period of 3 years